IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. NO. 965 (MS) OF 2004

Smt. Hasni Devi Mamgai ……Petitioner.

Versus

Smt. Shanti Mamgai and others. …….Respondents.

HON'BLE RAJESH TANDON J.

Heard Sri Siddhartha Shah, counsel for the petitioner.

By the present Writ Petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 19.08.2004, 20.09.2004 and 01.10.2004. At present, the petitioner has confined his prayer only against the order dated 20.09.2004.

Briefly stated the Suit was filed by the plaintiff for permanent prohibitory injunction claiming a decree for permanent injunction in favour of the petitioner against the defendant by restraining the defendants from interfering in repairing and renovating work of the plaintiff in her tenanted accommodation. The petitioner has stated that she is residing in the tenanted accommodation and the accommodation needs repairs and renovation to make it habitable and for that purpose, she has filed a Suit.

During the proceedings of the Suit, the defendant has filed a Counter Claim. The plaintiff has filed an application under Order 7 Rule 11 C.P.C. for rejection of his Counter Claim. The said application was rejected on 19th August, 2004. Thereafter the grievance of the petitioner is that she has not been permitted to file the Written Statement to the Counter Claim. Under Order 8 Rule 6 the Counter Claim is being treated as a plaint and therefore, it was incumbent upon the parties to have permitted the petitioner to file Written Statement to the Counter Claim. Further on 23rd September, 2004, the case has been fixed straight way for final arguments without affording the petition to lead in point of fact the evidence.

Without entering into the merits of the contention of the petitioner, the petitioner is permitted to move an application before the Court below for permission to file the Written Statement and also to produce the evidence for which the list may be submitted. The Court below shall dispose of both the applications. Liberty is given to the petitioner to approach the Civil Court within a period of two weeks and upon filing of the said application, the same shall be considered on the principles of natural justice.

Till the disposal of the application filed by the petitioner, the proceedings of the case shall remain in abeyance.

Subject to the aforesaid observations, the Writ Petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

06.10.2004
P.S.Rathour